

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

Michael Johnson, et al.,)	
)	C/A No. 1:10-CV-2557-MBS
Plaintiff,)	
)	
vs.)	O R D E R
)	
Taylor Bean Whitaker Mortgage Corp.;)	
MERS; John Doe; and Jane Doe,)	
)	
Defendants.)	
_____)	

This matter is before the court on Defendant Taylor Bean Whitaker Mortgage Corporation's motion for summary judgment, filed on October 26, 2010, and Defendant MERS' motion to dismiss, filed on December 28, 2010. ECF Nos. 23 & 39. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this case was referred to United States Magistrate Judge Paige J. Gossett for a Report and Recommendation ("R&R"). Pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), Plaintiff was advised of the summary judgment and dismissal procedures and the possible consequences of failing to adequately respond to Defendants' motions. See Roseboro Orders, ECF Nos. 25 & 41. After Plaintiff failed to respond to the first Roseboro order, the Magistrate Judge issued an order specifically advising Plaintiff that, given his failure to respond to the motion for summary judgment, "it appears to the court that he does not oppose the motion and wishes to abandon his claims against this defendant." Dec. 8, 2010 Order 1, ECF No. 37. The Magistrate Judge advised Plaintiff that he would be given an additional fourteen days from the date of that order to respond to the motion for summary judgment. Plaintiff was "further advised that if he fails to respond, **this action will be recommended for dismissal with prejudice for failure to prosecute.**" Id. at 2 (emphasis in original). Plaintiff did not respond to either the motion for summary judgment

or the motion to dismiss and, on February 9, 2011, the Magistrate Judge filed a R&R in which she recommended that this action be dismissed with prejudice for lack of prosecution and all pending motions be terminated. R&R 2, ECF No. 44. Plaintiff has not filed an objection to the R&R.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this Court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of any portions of the R&R to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The Court has thoroughly reviewed the record. The court concurs with the Magistrate Judge’s recommendations and incorporates the R&R herein. This action is hereby **dismissed** with prejudice for failure to prosecute. All pending motions are **terminated**.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina
May 9, 2011